UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte PAUL ROLLER MICHAELIS and
DAVID S. MOHLER

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Appeal 2016-005152
Application 12/029,214
Technology Center 3700

_____

Before HUBERT C. LORIN, CYNTHIA L. MURPHY, and
BRADLEY B. BAYAT *Administrative Patent Judges.*

MURPHY, *Administrative Patent Judge.*

DECISION ON APPEAL

The Appellants[1] appeal under 35 U.S.C. § 134 from the Examiner's
rejections of claims 1, 2, 4–8, 10, 12–14, and 16–26. We have jurisdiction
over this appeal under 35 U.S.C. § 6(b).

We REVERSE and enter NEW GROUNDS OF REJECTION
pursuant to our authority under 37 C.F.R. § 41.50(b).

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[1] The Appellants identify the real party in interest as "Avaya Technology
LLC." (Appeal Br. 2.)

STATEMENT OF THE CASE

According to the Appellants, "the invention relates to applying filtration rules based on the context in which a request for content is made." (Spec. 1, ll. 7–8.)

Illustrative Claim

1. A method for filtering content, comprising:

issuing a first request for content, wherein the first request for content is a first request for web content, by a processor, from a user;

in response to the first request for web content, receiving, by the processor, a first plurality of items of content;

determining by a processor enabled filter application a context applicable to the first request for web content, wherein a first context is determined to be applicable to the first request for web content;

in response to determining that the first context is applicable to the first request for web content, the filter application selecting a first filter parameter from a plurality of filter parameters and a first filter parameter value;

after selecting the first filter parameter and the first filter parameter value, applying by the filter application the first filter parameter and the first filter parameter value to each item of content included in the first plurality of items of content;

as a result of applying the first filter parameter and the first filter parameter value to each of the first plurality of items of content, preventing a first item of content included in the first plurality of items of content from being presented to the user;

issuing a second request for content, wherein the second request for content is a second request for web content from the user;

determining by the filter application a context applicable to the second request for web content, wherein a second context is determined to apply to the second request for web content;

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in response to determining the context applicable to the
second request for web content, selecting a second filter
parameter from the plurality of filter parameters and a second
filter parameter value; and

providing information disclosing a future event that the
user is scheduled to participate in to the filter application,
wherein the first context is determined with reference to the
scheduled future event, wherein the future event that the user is
scheduled to participate in is in a first location and the first
filter parameter identifies a second location that is associated
with the future event, wherein the filter application prevents the
first item of content, which is associated with the second
location from being presented based on the future event in the
first location.

Prior Art

Matthews	US 2003/0050986 A1	Mar. 13, 2003
Sathyanarayan	US 6,691,106 B1	Feb. 10, 2004
Koch	US 2004/0111411 A1	June 10, 2004
Price	US 2008/0250334 A1	Oct. 9, 2008
AAPA	"[T]ext and heuristic filtering mechanisms" are "known to those skilled in the art." (Spec. 13 ll. 1–3, *see also id.* at 8, ll. 26–28.)	

Rejections

The Examiner rejects claims 1, 2, 4–8, 10, 12, 13, 16, and 18–26

under 35 U.S.C. § 103(a) as unpatentable over Koch, AAPA, Sathyanarayan,

and Price. (Final Action 3.)

The Examiner rejects claims 14 and 17 under 35 U.S.C. § 103(a) as

unpatentable over Koch, AAPA, Sathyanarayan, Price, and Matthews.

(Final Action 20.)

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ANALYSIS

Claims 1, 19, and 24 are the independent claims on appeal, with the rest of the claims on appeal (i.e., claims 2, 4–8, 10, 12–14, 16–18, 20–23, 25, and 26) depending therefrom. (*See* Appeal Br., Claims App.)

Independent claim 1 is directed to a method "for filtering content" and independent claims 19 and 24 are each directed to system for doing the same. (Appeal Br., Claims App.) These independent claims require a request for "web content" the receipt of "items of content" in response to this request, and a filtering "context" that prevents a received item of content "from being presented." (*Id.*) This filtering "context" is both applicable to the "request for web content"[2] and "determined with reference to [a] scheduled future event." (*Id.*)

The Appellants point to the following scenario described in the Specification as an example of the claimed method/systems:

> [T]he context for a request for content is provided by [a] calendar application, with reference to [a] clock application. More particularly, the user may have an entry in the calendar application indicating that the user will be taking a vacation to Canada in the near future. Moreover, a predefined "I'm interested in fishing gear" filter profile can be enabled through manual selection by the user, or automatically enabled if the user is detected to be in a sporting goods store, for example as indicated by information from [a] location application. Within this context, a request for content made to a web server operated by a sporting goods supplier that returns content can be filtered so that items related to tropical fishing equipment are suppressed,

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[2] Independent claim 1 recites a determination of "a context applicable to" the request for web content," independent claim 19 recites "a context in which the request for web content is made," and independent claim 24 recites "the context in which a request from a user for web content is made." (Appeal Br., Claims App.)

> while items related to fly fishing are allowed to pass as filtered
> items to the browser application.

(Spec. 16, ll. 7–17, reference numerals omitted.) In this fishing-gear

scenario, the "scheduled future event" is the user's vacation to Canada, and

the filtering "context" is both applicable to the request for fishing-gear

content and determined with reference to the upcoming trip to Canada. (*See*

Reply Br. 7.) Apparently, fly-fishing gear would be purchased for a trip to

Canada, but tropical-fishing gear would not. Hence, when the filtering

context is "based on the vacation to Canada," fly-fishing gear is presented to

the user, but "tropical fishing equipment is suppressed." (*Id.*)

The Examiner relies upon Koch to teach a request for "web content,"

the receipt of "items of content" in response to this request, and a filtering

"context" that relates to the request for web content. (Final Action 3–4.)

Koch teaches that "filter data defining relevance is generated locally and

may be preselected either by the user or by a locating device, for example,

so that geographically relevant data is displayed, or by a clock so that data

relevant in time is displayed." (Koch, ¶ 15.)

Consequently, if a user of Koch's filtering process is at a sporting

goods store purchasing fishing supplies for an upcoming trip to Canada,

Koch's filter data would define relevance in the context of the user's current

location in the sporting goods store. Hence, in response to a request for

fishing-gear content, content pertaining to tropical-fishing gear would not be

suppressed, as Koch's filtering context would not take into account the

user's upcoming trip to Canada.

The Examiner's rejection, as we understand it, is premised upon

Sathyanarayan teaching that an incorporation of its profile agent into Koch

would result in Koch's filter data defining relevance with reference to a scheduled future event.[3] We are persuaded by the Appellants' arguments (*see* Appeal Br., 7–10; *see also* Reply Br. 2–6) that the Examiner does not sufficiently establish that Sathyanarayan provides such a teaching.

Sathyanarayan discloses a profile agent that "queries any installed calendar applications, such as Microsoft Outlook, to capture any appointment details (meetings, events, etc.) for the user." (Sathyanarayan, col. 3, ll. 38–42.) However, Sathyanarayan does not indicate that all of the data collected by its profile agent necessarily contributes to the filtering process. Instead, data collected by Sathyanarayan's profile agent is used to generate a "user profile" and it is this user profile, not the profile agent, which is "used to filter out information." (Reply Br. 5; *see also, e.g.,* Sathyanarayan, col. 6, ll. 41–55.) And, significantly, the only calendar-captured data that seems to make its way to Sathyanarayan's user profile is information regarding "the user's current location and appointment status (busy/not busy)." (Sathyanarayan, col. 5, ll. 29–30; *see also id.* at col. 1, l. 56, col. 6, l. 7).

Thus, if Sathyanarayan's profile agent was incorporated into Koch, as proposed by the Examiner (*see* Final Action 6), this profile agent would indeed capture a future trip to Canada scheduled on the user's calendar. However, a sound adoption of Sathyanarayan's teachings would not result in Kohn's filter data defining relevance based upon information in this profile

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[3] The Examiner finds that Koch does not teach a filtering context that "is determined with reference to the scheduled future event," finds that Sathyanarayan teaches a filtering context that "is determined with reference to [a] scheduled event," and determines that it would have been obvious for Koch to use the "profile agent from Sathyanarayan." (Final Action 5–6.)

agent, but rather based on information in a user profile generated thereby. And, as indicated above, Sathyanarayan teaches that a so-generated user profile contains information regarding the user's current location and appointment status, not future events.

Consequently, if a user is at a sporting goods store purchasing fishing supplies for a future vacation to Canada, Sathyanarayan does not teach that Koch's filter data should define relevance in the context of this upcoming trip. Hence, even if Koch was provided with Sathyanarayan's profile agent, and even if this profile agent captured data regarding the user's upcoming trip to Canada, content pertaining to tropical-fishing gear would not be suppressed in response to a request for fishing-gear content.

Accordingly, the Examiner does not sufficiently establish that Sathyanarayan teaches a filtering context that "is determined with reference to [a] scheduled future event" as required by independent claims 1, 19, and 24.[4] And the Examiner's further findings and determinations with respect to the additional prior art (*see* Final Action 6–10, 12–14, and 16–20) do not compensate for this shortcoming in Sathyanarayan.

Thus, we do not sustain the Examiner's rejection of claims 1, 2, 4–8, 10, 12, 13, 16, and 18–26 under 35 U.S.C. § 103(a) as unpatentable over Koch, AAPA, Sathyanarayan, and Price; and we do not sustain the Examiner's rejection of claims 14 and 17 under 35 U.S.C. § 103(a) as unpatentable over Koch, AAPA, Sathyanarayan, Price, and Matthews.

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[4] Sathyanarayan also discloses that the user profile can include information regarding "the user's current goal." (Sathyanarayan, col. 6, ll. 7–8.) Insofar as the Examiner is equating a user's current goal (e.g., losing 20 pounds) to a future event (*see* Answer 3–4), we agree with the Appellant that such a goal would not constitute a "future scheduled event" l (*see* Reply Br. 5–6).

NEW GROUND OF REJECTION

Pursuant to our authority under 37 C.F.R. § 41.50(b), we enter the following new grounds of rejection: we reject claims 1, 2, 4–8, 10, 12, 13, 16, and 18–26 under 35 U.S.C. § 101 as an attempt to claim nothing significantly more than an abstract idea.

In *Alice Corp. Pty Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014), the Supreme Court provided a two-step test for distinguishing a claim to an "abstract idea" from a claim to "a patent-eligible application" of an abstract idea. The first step in the *Alice* test is to determine whether the claim at issue is "directed to" an abstract idea. *Id.* If so, the second step in the *Alice* test is to consider the elements of the claim "individually and 'as an ordered combination'" to determine whether there are additional elements that "'transform the nature of the claim' into a patent-eligible application." *Id.*

Applying the first step of the *Alice* test, as indicated above, independent claim 1 is directed to a method "for filtering content" and independent claims 19 and 24 are each directed to a system for doing the same. (Appeal Br., Claims App.) Indeed, as acknowledged by the Appellants during prosecution, '[c]laim 1 is directed toward a method for filtering responses from web sites." (*See* response filed on March 3, 2015.) Moreover, the Specification describes the "present invention" as "relat[ing] to the filtering of information pushed to a communication device." (Spec. 1, ll. 7–8.)

The record supports a conclusion, therefore, that the claims on appeal are directed to "filtering content," and case law establishes that "filtering content" is a longstanding, well-known method of organizing human

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behavior and thus an abstract idea.[5] Case law also establishes that an

abstract idea involving "an Internet computer network" is still an abstract

idea. *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d

1363, 1368 (Fed. Cir. 2015). Thus independent claims 1, 19, and 24

succumb to the first step of the *Alice* test, and we proceed to the second step

of the *Alice* test.

Applying the second step of the *Alice* test, we look to the additional

claim elements to determine whether they transform the above-identified

abstract idea (i.e., filtering content) into a patent-eligible application of this

abstract idea. Here, the additional claim elements entail software

"application[s]" for execution, a "memory" for storing software, a

"processer" for execution of software, a "user communication device," for

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[5] *See Amdocs (Israel) Limited v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294
(Fed. Cir. 2016) ("[A] mechanism courts now apply" to determine whether a
claimed concept is an abstract idea "is to examine earlier cases in which a
similar or parallel descriptive nature can be seen—what prior cases were
about, and which way they were decided.") Here, comparable earlier cases
include *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d
1363, 1367 (Fed. Cir. 2015) (holding that "tracking financial transactions to
determine whether they exceed a pre-set spending limit (i.e., budgeting)" is
an abstract idea that "is not meaningfully different from the ideas found to
be abstract in other cases . . . involving methods of organizing human
activity"); *Content Extraction & Transmission LLC v. Wells Fargo Bank,
Nat'l Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (finding that " collecting
data," "recognizing certain data within the collected data set," and "storing
that recognized data in a memory" was an abstract idea because "data
collection, recognition, and storage is undisputedly well-known" and
"humans have always performed these functions"); *Digitech Image Techs.,
LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1350 (Fed. Cir. 2014)
(finding that "a process of organizing information through mathematical
correlations" is an abstract idea).

receiving communications, and a "communication interface" presumably for allowing communication among computer-related components. (Appeal Br., Claims App.) In other words, independent claims 1, 19, and 24 merely call for performance of the claimed content-filtering functions on conventional computer and network devices, arranged in a conventional manner.[6] The Specification likewise conveys such conventionality. (*See* Spec. 4–6, Fig. 1). As for the recited software applications, neither the claims nor the Specification give any indication that they invoke any assertedly inventive programming.

Thus, upon application of the two-step *Alice* test, independent claims 1, 19, and 24 do not pass muster under 35 U.S.C. § 101 as they constitute an attempt to claim nothing significantly more than the abstract idea of filtering content.

We discern that independent claims 1, 19, and 24 have large portions devoted to enumerateing the particulars of "request[s] for content," "items of content," "context[es]," "filter parameter[s]," "value[s]," "information disclosing a future event," and/or "location[s]." (Appeal Br., Claims App.)

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[6] The claims at issue here do not require an arguably inventive device or technique for displaying information, unlike the claims at issue in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014) (at JMOL stage finding inventive concept in modification of conventional mechanics behind website display to produce dual-source integrated hybrid display). Nor do the claims here require an arguably inventive distribution of functionality within a network, thus distinguishing the claims at issue from those in *Bascom Global Internet v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016) (at pleading stage finding sufficient inventive concept in "the installation of a filtering tool at a specific location, remote from the end users, with customizable filtering features specific to each end user.").

We note that these limitations have not been overlooked or ignored, but rather carefully considered, in our application of the *Alice* test. However, our careful consideration of these limitations revealed that they do nothing significant to differentiate the claimed method/systems from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas. A strategic selection of filtering parameters for the sought end of presenting only the most appropriate content, for example, would be a necessary step in any content-filtering procedure, be it computerized or not.

As for the dependent claims, they recite only further collection, recognition, organization, non-presentation, and/or display of the above-described data (claims 2, 4–7, 14, 16, 18, 20, and 21); details of the above-described data (claims 10, 12 13, and 17); location concomitant limitations (claims 7 and 8); additional listing or labeling of software applications (claims 14, 16, and 20–22); and/or conventional parts of the user communication device (claim 23). These additional recitals do not elevate any of the dependent claims above the abstract idea of filtering content nor do they transform the dependent claims into something significantly more than this abstract idea.

DECISION

We REVERSE the Examiner's rejections of claims 1, 2, 4–8, 10, 12–14, and 16–26.

We enter NEW GROUNDS OF REJECTION, pursuant to 37 C.F.R. § 41.50(b), rejecting claims 1, 2, 4–8, 10, 12, 13, 16, and 18–26 under 35 U.S.C. § 101.

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NON-FINALITY OF DECISION

37 C.F.R. § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review." 37 C.F.R. § 41.50(b) also provide that the Appellants, <u>WITHIN TWO MONTHS FROM THE DATE OF THE DECISION</u>, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

> (1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the Examiner, in which event the prosecution will be remanded to the Examiner.

> (2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

<u>REVERSED</u>
<u>37 C.F.R. § 41.50(b)</u>